IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sanjay Kumar Chhajer v. Smt. Pramila Choudhary & Ors.

S.B.CIVIL WRIT PETITION NO.6773/2005
under Article 227 of the Constitution of India.

Date of Order : 29th March, 2006

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.K.Thanvi, for the petitioner.
Mr. N.R.Choudhary, caveator, for the respondents.

BY THE COURT :

An application seeking temporary injunction was filed by the plaintiff petitioner alongwith a suit filed by him for possession of property and perpetual-mandatory injunction before the court of Civil Judge (SD), Jodhpur. By the order dated 6.7.2005 learned trial court accepted the application so preferred by the plaintiff petitioner by restraining the defendant respondent from raising any construction over the plot in dispute (as averred in para 1 of the application) against the law during pendency of the suit and also ordered the parties to the suit to maintain status quo with regard to possession and position of the construction at the disputed site in accordance with the report dated 24.5.2005 submitted by the Commissioner appointed by the court.

The defendant respondent being aggrieved by the order dated 6.7.2005 preferred an appeal before the learned Additional District Judge No.3, Jodhpur which came to be accepted by the order dated 11.11.2005. Learned Additional District Judge set aside the order dated 6.7.2005 and dismissed the application preferred under Order 39 Rule 1 and 2 read with Section 151 CPC.

By the instant petition for writ validity and propriety of the order dated 11.11.2005 is called for to challenge by plaintiff petitioner.

While giving challenge to the order dated 11.11.2005 it is contended by counsel for the petitioner that the appellate court interfered with a discretionary order of the trial court which could not be said to be perverse, arbitrary, capricious or in disregard of the sound legal principles. It is further stated that the scope of the appellate court to interfere with an order granting temporary injunction is quite limited and it have no jurisdiction to interfere with the order of the trial court until it is established that the trial court acted arbitrarily, the order passed is perverse and no judicious mind is applied on all the material brought on record. According to counsel for the petitioner in the instant matter the trial court after considering the entire material available on record and also the report of

the commissioner reached at the conclusion that there is a prima facie case in favour of the petitioner and in the event temporary injunction as prayed be not passed then same shall cause irreparable injury to the petitioner and while doing so the trial court also found balance of convenience in favour of the plaintiff. The appellate court while interfering with the order passed by the trial court has not taken into consideration any of the facts and material available on record on the basis of which the trial court granted the interim order. The trial court, therefore, has committed a material illegality while interfering with the discretionary order passed by the court below.

Per contra, it is urged by learned counsel for the respondent defendant that there is no prima facie case in favour of the plaintiff petitioner and he by placing false facts tried to misled the courts below, therefore, the appellate court reached at the conclusion that he has not approached the court with clean hands, accordingly the appeal preferred by the defendant was accepted and the order dated 6.7.2005 was rightly set aside.

Heard counsel for the parties.

The contention of counsel for the petitioner is that the first appellate court erred while

interfering with the order passed by the trial court which is based on sound appreciation of the material available on record and that is not at all perverse, arbitrary or capricious. Counsel for the petitioner placed reliance upon a judgment of this Court in the case of Smt. Vimla Devi v. Jang Bahadur, reported in 1977 RLW 326, prescribing a broad criteria wherein interference by first appellate court can be made while dealing with an order passed by the trial court granting temporary injunction. The relevant portion of the judgment referred above reads as under:-

> "11.In the light of the above observations, I have now to see whether it was open to the learned District Judge to interfere with the order of the learned trial Court. It is well settled that the grant of temporary injunction is a discretionary order and the decision of the firs Court could not be easily interfered with by the appellate Court vide Musa vs. Badri Prasad (1). The mere possibility of the appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference vide Wazir Sunder Singh vs. Musammat Farida Khanam (2). Another well established principle while disposing of the application under Order 39 Rules 1 and 2 C.P.C. is that when the Court while dealing with the case for grant of temporary injunction decides the question of prima facie case, it should apply its judicial mind to the materials which are placed on the record and if it does not do so then it

commits illegality in the exercise of jurisdiction and in that case the High Court is competent to interfere in revsion in such a case vide Musa vs. Badri Prasad (supra). The view taken in Musa vs. Badri Prasad (supra) has been followed by Kan Singh J. in Girdhari Lal vs. Mahadevi Sharma (3). It has been held in this case that the appellate Court should be slow in upsetting a decision of a trial Court in a matter relating to grant of temporary injunction unless the decision of the trial Court is arbitrary, perverse or is not based on sound legal principles. It has been further observed in that case that when the appellate Court does not apply its judicial mind on all the materials brought on the record then in that case the approach of an appellate Court would be wrong and contrary to the well established principles laid down by the High Court, more so when the appellate Court does not deal with the reasoning that has prevailed with the trial Court and further when it does not apply its judicial mind on the materials placed on the record.

12.In Vellakutty vs. Karthyavani (4) it has been laid down that a prima facie case implies the probability of the plaintiff obtaining a relief on the materials placed before the Court at that stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction. The Kerala High Court has further observed that the granting of injunction being a very serious matter in that it restrains the

> opposite parties from the exercise of their rights, the Court does not issue the injunction unless it is thoroughly satisfied that there is a prima facie case in favour of the applicant."

It is urged by counsel for the petitioner that the appellate court in its order has not at all taken into consideration the material available on record on basis of which a temporary injunction was granted under the order dated 6.7.2005.

From perusal of the order impugned it is apparent that the first appellate court has not at all taken into consideration the material taken into consideration by then trial court and also the report given by the Commissioner appointed by the court. The first appellate court in fact without assigning any reason held that there is no prima facie case in favour of the plaintiff petitioner and also in the same fashion held that the balance of convenience also not lies in granting the interim order and there shall be no irreparable injury to the plaintiff petitioner in the event of non grant of temporary injunction as prayed.

It is well settled that the first appellate court should be slow in interfering with the orders passed by the trial court. The interference by the first appellate court with the order passed by the

trial court exercising its discretion in granting a temporary injunction should be made only if the trial court acted arbitrarily, capriciously or passed an order perverse or if the order is contrary to settled preposition of law. The appellate court nowhere held that the order passed by the trial court is perverse, arbitrary or capricious or is in contravention of the sound legal prepositions.

From the facts averred in the order passed by the trial court and also averred in the order passed by the first appellate court it is apparent that the complicated questions of fact are required to be adjudicated in the original suit. The direction given by the trial court is only to maintain the status quo with regard to the possession and construction at the site disputed in accordance with the report given by the Commissioner on 24.4.2005 with a caution to the defendant not to make any construction against the law. The order passed by the trial court, therefore, is quite reasonable and a vigilant one. In view of it I am of the considered opinion that the first appellate court erroneously interfered with the order passed by the trial court. The first appellate court also failed to take into consideration the entire material available on record on basis of which temporary injunction was granted by the trial court and, therefore, the first appellate court failed to exercise jurisdiction vested with it.

Accordingly, this petition for writ succeeds and, therefore, is allowed. The order impugned dated 11.11.2005 passed by Additional District Judge No.3, Jodhpur is hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.